IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8484 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAUSHALSINH RADHESYAMSINH CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR UDAI R BHATT, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 14/11/2000

ORAL JUDGEMENT

1. The petitioner has challenged the detention order passed by the Police Commissioner, Ahmedabad, on 10th July, 2000 against the present petitioner under the Gujarat Prevention of Anti Social Activities Act, 1985

(PASA for short) by virtue of powers conferred upon him under Sec. 3 (1) of the said Act. The petitioner was detained in pursuance of order dated 10th July, 2000 from 10th July, 2000.

2. Detention order passed by Police Commissioner, Ahmedabad, Detaining Authority, on 10th July, 2000 is placed on record. The grounds are also placed on record, which are served to the detenu - petitioner. Grounds reveal that the detaining authority has reached to subjective satisfaction that the petitioner was indulging in anti social activities. So far as materials to reach to this conclusion, detaining authority has given reasons in the grounds served upon the petitioner. It is mentioned in the grounds that the petitioner along with his associates dealing in prohibited liquor and import liquor from outside state and distributing and selling the same within the State of Gujarat. A crime is registered against the petitioner vide C.R.No. 623 of 2000 before the Gandhinagar Police Station on 5th July, 2000 under Sections 66 (B), 65(A) (E), 81, 83 and 116(B) of the Bombay Prohibition Act. In this case, 360 bottles of liquor, worth of Rs. 96,000 along with one Maruti Van were seized from the petitioner. Detaining authority took into consideration the papers of this crime register i.e. investigation made for the offence registered against the petitioner. Detaining authority therefore reached to the conclusion that the activities of the petitioner is criminal because he is importing liquor from Dungarpur, Rajasthan and supplies liquor in bulk to the persons dealing in the liquor. It is also mentioned by the detaining authority that for creating fear among citizens, the petitioner keeps lethal weapons with him and frightens the citizens and thereby causing obstruction in public order. In addition to this, the detaining authority has taken into consideration the statements of two witnesses who have narrated the incidence of 25th June, 2000 and 30th June, 2000. From one of these witnesses, petitioner demanded vehicle of the witness for transportation of liquor. On denying, the witness was beaten by the petitioner. While the other witness stated that on assumption that the witness keeps watch on the activity of the petitioner and provides information to Police, the witness was badly beaten by the petitioner. Both the witnesses, according to the detaining authority, due to fear of the petitioner, were not prepared to disclose their identity and this fact was verified by the detaining authority and was found true. The detaining authority therefore exercised power under Sec. 9(2) of the Act and identity

of the witnesses were kept secret. Detaining authority was also considered that by taking action under Sec. 93 of the Bombay Prohibition Act, the illegal activities of the petitioner cannot effectively be prevented and also no effective steps according to detaining authority can be taken under Sec. 437(5) of the Cr. Procedure Code for the cancellation of the bail. For these reasons, by way of last resort, the detaining authority passed the detention order and as said above from 10th July, 2000, the petitioner is under detention.

3. Learned Advocate Mrs. Subhadraben Patel for the petitioner and learned AGP Mr. Udai Bhatt for the respondents were heard.

4. The detention order was attacked by the petitioner on various grounds. On scrutinising, it clearly appears that the impugned detention order is vitiated by non-application of mind by the detaining authority qua State.

5. Certain facts which are required to be taken into consideration are as under :

(i) The Crime which is mentioned in the detention order was registered against the petitioner on 5th of July, 2000. The detention order came to be passed on 10th of July 2000. In prohibition, Crime Register No. 623 of 2000, the petitioner was arrested by the Police and was produced before the Magistrate on 6th of July, 2000. Petitioner, on the same day preferred Bail Application which was objected by the State. Learned Judicial Magistrate, First Class, by his order dated 6th July, 2000, rejected the Bail Application of the petitioner in Crime Register No. Prohibition 623 of 2000. From 5th July, 2000, the petitioner remained in judicial custody. Xerox copy of Bail Application along with the order passed by the Court is placed on record by learned Advocate for the petitioner, which is taken on record. Learned Advocate for the petitioner makes a statement that the petitioner thereafter was released on bail by the Court of Sessions on 20th July, 2000.

(ii) Non-application of mind of the detaining authority qua facts emerges from the grounds that on the date of passing the detention order though petitioner was under judicial custody and the question of considering cancellation of bail

under Section 437(5) was not considered by detaining authority to be germane. Detaining authority, however, considered that the proceedings for the cancellation of the bail under Section 437(5) would not be quite effective action because the same was normally to take time. This shows that the casual approach by the detaining authority to the facts and materials produced before him for consideration of passing an order under PASA Act, detaining a person without trial.

6. The second aspect is non-application of mind is revealed by a statement in the grounds that the petitioner applying for the bail before the court be released by the court at any time on bail and after releasing the petitioner was likely to indulge in anti social and illegal activities. This ground proceeds on mere presumption and this is an example of non-application of mind to the facts of the case. Except the statement of two witnesses, from the grounds mentioned, there in nothing on the record to come to a conclusion that the petitioner was dealing habitually in liquor and, therefore, the question of taking action under section 93 of the Bombay Prohibition Act did not arise. While detaining authority reached to a conclusion that the illegal activities could not be prohibited even taking action under Section 93 of the Bombay Prohibition Act. Here also, the non-application of mind of detaining authority is revealed. For the above said reasons, the detention order passed by the Police Commissioner, Ahmedabad City, detaining authority, is vitiated and the same is required to be set aside.

7. In view of the above said discussion, this petition is allowed. The detention order dated 10th July, 2000 passed against the petitioner is hereby ordered to be quashed and set aside. Petitioner Kaushalsinh Radhesyamsinh Chauhan is ordered to be set at liberty forthwith, if he is not required for any other purpose. Rule is made absolute. D.S. is permitted.

(J.R. Vora, J.)

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